
(2014) 11 SHI CK 0090
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 5677 of 2014

Abhimanyu Rathor

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 04-11-2014

Acts Referred:

Constitution of India, 1950 — Article 48A, 51A(g)
Himachal Pradesh Municipal Corporation Act, 1994 — Section 339, 340, 341, 342, 343

Citation : (2014) 11 SHI CK 0090

Hon'ble Judges : Sureshwar Thakur, J; Rajiv Sharma, J

Bench : Division Bench

Advocate : Shrawan Dogra, A.G., M.A. Khan, Addl. A.G., Ramesh Thakur, Asstt. A.G., Hamender Chandel and B.C. Negi, Advocate for the Respondent

Judgement

Rajiv Sharma, J.—The learned Advocate General has produced the entire record which led to granting of permission to fell 101 number of trees within the territorial jurisdiction of M.C. Shimla, by the Cabinet Sub-Committee.

2. Shimla town exists on seven spurs. It was called "queen of hills". However, the "queen of hills" has lost its beauty due to massive destruction of forest wealth within the territorial jurisdiction of M.C. Shimla. The forest cover in Shimla town is the maximum for any town/city in India. The State is required to make all endeavors to protect and improve the environment and safeguard the forests and wild life of the Country, as per Article 48A of the Constitution of India. It is fundamental duty of all of us to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures as enshrined under Article 51A(g). Articles 48A and 51A(g) of the Constitution of India are magna carta for protecting the environment and ecology of the Country. The forests, oceans, sea and air belong to none. Thus, they belong to all of us under Roman Law. It is the duty of every citizen to protect the environment and pass on the same in the same condition to the next generation. We have already caused immense damage to the environment and ecology

resulting in global warming. The global warming has even reduced the crop yield and has changed the weather pattern. The Kedarnath and Srinagar tragedies are the outcome of reckless and irreparable loss caused to the environment and ecology. Every citizen has a right to breathe fresh air and access to potable water. The M.C. Shimla, could not be oblivious to these grim facts. There has to be complete bonhomie and mutual respect for each other in all the organs of the State.

3. We should not hurt the feelings of any living creatures, may be animals or trees/plants. Every branch cut and even a blade of grass destroyed affects the global environment. Trees do have a right to live. When a tree is cut/fell, we snap our links with the nature permanently. The trees are providers of life for human beings and they also provide shelters to the birds. When we cut a tree, we also destroy the nests of birds. Let million of birds chirp happily and merrily on the magnificent branches of the trees. Let us enjoy the whistling sounds of air originating from the deodar trees. Human race would only survive if the forests survive. Dr. Jagdish Chandra Bose was first to study the action of microwaves in plant tissues and corresponding changes in the cell membrane potential. He researched the mechanism of the seasonal effect on plants, the effect of chemical inhibitors on plant stimuli and the effect of temperature. From the analysis of the variation of the cell membrane potential of plants under different circumstances, he hypothesized that plants can "feel pain, understand affection etc." He also demonstrated that plants are also sensitive to heat, cold and various other external stimuli. He also proved by experimentation that both animals and plants share much in common. Thus, we should not hurt the feelings of the trees and plants.

4. Shimla town is losing its glory due to massive construction activity. The trees are replaced by huge concrete structures which can be termed only as eyesores. Himachal Pradesh has tremendous tourism potential. The tourists visit the State of Himachal Pradesh to admire its scenic beauty. The maximum number of trees in Shimla town is of "deodar" species. The word "deodar" has been derived from Sanskrit word devdaru ? "divine" tree. Thus, we must respect their feelings. The deodar tree takes about more than 150 years to mature. It just takes a person to cut/remove such a magnificent tall cedar, native of the Himalayas few minutes. All the ancient civilizations world over have perished due to scarcity of natural resources around them.

5. The regulation of felling and planting of trees is provided under Chapter XX of the H.P. Municipal Corporation Act, 1994 (hereinafter referred to as the Act for brevity sake). Section 339 of the Act provides that no person shall cut, damage, destroy, fell or remove any tree of the prescribed class, whether included in a private holding or not, within the jurisdiction of Municipal Corporation, except with prior permission obtained from the State Government. Section 340 provides for constitution of the Tree Authority as under:

(i) The Mayor of the Municipal Corporation;

- (ii) The Commissioner;
- (iii) The Divisional Forest Officer having jurisdiction over the city;
- (iv) The District Horticulture Officer having jurisdiction over the city; and
- (v) One Councillor to be nominated by the Mayor.

(2) The Mayor shall be the Chairman of the Tree Authority.

6. The Tree Authority as per Section 341 has to meet at least once in two months at such place and time as the Chairman may decide. Section 342 postulates duties of Tree Authority as under:

- (a) The preservation of all trees within its jurisdiction;
- (b) Obtaining declaration from all owners or occupants about the number of trees in their lands;
- (c) Specifying the standards regarding the number of kind of trees in each locality, type of land and premises shall have;
- (d) Assisting private and public institutions connected with planting and preservation of trees; and
- (e) Undertaking such schemes or measures as may be directed from time to time for achieving the objectives of these provisions.

7. Section 343 provides for appointment of Tree Officer. According to Section 344, any person intending to cut, fell or remove a tree within the territorial jurisdiction of the Corporation shall make an application to the Tree Officer, in such form and containing such particulars and accompanied by such documents, as may be prescribed. Section 345 lays down that on receipt of application from any person to fell any standing tree or to cut, lop, remove or otherwise dispose of a fallen tree, the Tree Authority shall, after making such inquiry as it may think fit, and with prior approval of the Government either permit in whole or in part or refuse the permission applied for. Section 346 provides that if in the opinion of the Tree Officer the number of trees in any land is not adequate according to the standards prescribed under clause (c) of Section 342, the Tree Officer may, by order, after giving a reasonable opportunity to the owner or occupier of the land of being heard, require him to plant such trees or additional trees and at such places in the land as may be prescribed. Section 348 provides for responsibilities for preservation of trees. Sections 351 and 352 deal with seizure and penalty.

8. In the instant case, the DFO, Shimla has written numerous letters to the Municipal Corporation Shimla for convening of the meeting of the Tree Authority as per Chapter XX of the Act. Surprisingly, the Municipal Corporation Shimla, has not convened the meeting of the Tree Authority. It was the responsibility of the Municipal Corporation to convene the meeting of the Tree Authority. Since the meeting was not convened by the Corporation, the DFO, Shimla has prepared the

list of trees posing imminent danger to life and property which required removal immediately.

9. We have gone through the data compiled by the DFO Shimla. The reasons given for felling of trees are practically nonexistent. He has merely given the description of the trees. In what manner the damage was being posed by these trees to life and property, requiring the removal of these trees, has not been enunciated. The DFO, Shimla has only mentioned that he has visited the spot with his team. Who all were the members of the team is not mentioned in the data/list compiled by him.

10. Since the Tree Authority has not met, the DFO, Shimla sent the data to the Principal Chief Conservator of Forests on 21.7.2014. The Secretary (Forests) sent the same to the Secretary (UD) on 21.7.2014 and thereafter Cabinet Sub Committee meeting was convened on 23.7.2014. The Cabinet Sub Committee accorded permission to remove 68 trees from government land and 33 from private land.

11. Ms. Sheela Negi has submitted an application to the DFO, Shimla on 5.7.2014. A telephonic message was also received from the Hon"ble Speaker, H.P. Vidhan Sabha about the existence of dangerous trees near Metropole on 4.7.2014 as per the record produced before us.

12. A person intending to cut, fell or remove the tree is required to submit application to the Tree Officer appointed under Section 343 of the Act. The permission to fell tree is to be granted as per Section 345 by the Tree Authority after holding due inquiry, as it may think fit and with the prior approval of the Government.

13. In the instant case, the Cabinet Sub Committee has recommended felling of trees without the recommendations of the Tree Authority. Thus, the permissions accorded by the Cabinet Sub Committee in its meeting held on 23.7.2014 are set aside. Mr. Hamender Chandel, Advocate appearing on behalf of the Corporation submits that there is no D.F.O. appointed for the Municipal Corporation, Shimla. In view of this, Secretary (Forests), is directed to nominate any officer not below the rank of Principal Conservator of Forests to be the member of the Tree Authority. However, in order to ensure that the permission is accorded for felling/removal of dangerous trees causing threat to life and property within the territorial jurisdiction of Municipal Corporation, Shimla, we dispose of the petition by issuing following mandatory directions:

1. The Municipal Corporation, Shimla through its Commissioner is directed to convene a meeting of Tree Authority within two weeks from today.

2. The Principal Secretary (Forests) is directed to place all the applications from governmental agencies and private persons before the Tree Authority within three days from the receipt of this order.

3. The Tree Authority is directed to take a final decision on all the applications

after holding inquiry as per Chapter XX of the Act, within a period of one week after the receipt of applications. The Tree Authority shall record convincing and cogent reasons while permitting felling/cutting of trees posing threat to life and property in each case. The Tree Committee is directed to photograph and videograph the spot while processing the applications. The felling of trees is to be permitted only as a last resort.

4. The Tree Authority shall ensure while granting permission to fell/cut trees that the applicant shall plant another tree or trees of the same or other suitable species preferably on the same site within 60 days of the date when the tree is cut.

5. The Tree Authority shall seek the approval of the Government to permit felling/cutting of trees posing threat to life and property within a period of two weeks after the applications are processed and final decision is taken thereupon. The Tree Authority is directed to ensure that no frivolous applications are filed and entertained for permission to fell the trees.

6. The Secretary (Forests), is directed to enumerate all the green trees of all the species standing within the territorial jurisdiction of M.C. Shimla in order to compile a data for their safety and protection within six months. Every tree shall carry a particular number. The enumeration shall be put on the official website of the Forest Department.

7. The Forest Department is directed to ensure the safety of all the trees within the territorial jurisdiction of M.C. Shimla by ensuring that no hoardings are put on the trees. The Forest Department is ordered to remove hoardings, wires including electric, telephone and cable wires put on the trees within 8 weeks. The resistance of removal of hoardings, wires etc. by any person or agency shall entail contempt and the person would be liable to be proceeded for contemptuous action.

14. Till the entire process is completed for according permission to fell/cut the trees posing threat to life and property, no tree shall be cut/fell/removed within the territorial jurisdiction of the Municipal Corporation, Shimla. We also direct the Secretary (Forests) to transfer the present D.F.O., posted in Shimla till the entire process is completed.

15. We place on record our appreciation for filing of the petition by a public spirited Advocate and the assistance rendered by all the Advocates during the course of hearing of this case.

16. Pending application(s), if any, also stands disposed of.

No costs.